

APAC - Associated Professionals and Contractors of CA, Inc.

January 23, 2013

Chairman Dan Richard
CEO Jeff Morales
770 L Street, Suite 800
Sacramento, CA 95814

Re: 1) Conflict of Interest Policy &Implementation
2) Caltrans Inter-Agency Agreement & 30% Goal

Dear Chairman Richard and CEO Morales,

Please note the following issues APAC is bringing to your attention:

1. Organizational Conflict of Interest- Right of Way (ROW) Contracts: APAC Requests that the Proposed Awards not be finalized until there is clarification of this specific conflict of interest being questioned.

Bender Rosenthal, Inc. is/was the primary ROW consultant to the Authority and has already performed work on 500 parcels in Central California. To our best knowledge, the 500 parcels were sole-sourced to Bender Rosenthal Inc., since a request for proposals was never publicized by the Authority. In 2012, the ROW Contract was unbundled into four contracts. The company/team that has the highest combined score (technical and cost score) is **Golden State Right of Way Team** with a total score of 913 on the Notice of Proposed Awards (attached). APAC's question is: Did Bender Rosenthal Inc. have an unfair competitive advantage when it formed Golden State Right of Way Team (see attached Fictitious Name Statement Info) and submitted a proposal for Right of Way Services to the Authority?

On September 11, 2012 the Authority approved an Organizational Conflict of Interest Policy (attached). The first goal states: - **To Promote Integrity, transparency, competitiveness and fairness** in contracting, second goal – **Prevent unfair competitive advantage**, third goal, Provide guidance to enable informed decisions and fourth goal, Protect validity of Authority Contracts and confidential/sensitive information. I will focus on the first two goals. The definition of Organizational Conflict of Interest states, "A circumstance arising out of a contractor's existing or past activities, business or financial interests, contractual relationships or organizational structure that results in: 1) Impairment or potential impairment of a Consultant's ability to render impartial assistance or advice to the Authority, 2) **Unfair competitive advantage for any Contractor bidding or proposing on an Authority procurement**, and 3) **A perception or appearance of impropriety** with respect to any of the Authority's procurements or contracts. Page 7 of the Policy states Case by Case Factors to Consider in Granting Permission to Participate or Continue to Participate in Procurement. 1) Whether the Contractor has information that will need to be made public or disclosed to other participants in the procurement that may give an **unfair advantage to the Contractor**, 2) Whether the **relationship involves other branch offices or a parent**

company and the degree of separation of work teams, The last two listings 3) Consideration of the expertise required to undertake the subject work, etc. and 4) Consideration of professional governing body rules like those established by the CA Board of Professional Engineers, are not applicable to the issue being raised here. Page 8 is the Contract Compatibility Matrix Example

Bender Rosenthal's Website states, "The California High-Speed Rail Authority contracted JV Partners to design and study routes through the southern Central Valley. JV Partners contracted Bender Rosenthal Inc. for right of way services including acquiring right of entry permits from property owners along the 197-mile study route from Fresno south to Palmdale." APAC, thus assumes, that Bender Rosenthal was/is a subcontractor to the Joint Venture Partners (Since there is no transparency on these contracts, we can only guess who the JV Partners referred to in the website are. Our best guess is that the Preliminary Engineering/Project Level EIR/EIS Team for the Merced to Fresno Segment is/was AECOM Transportation and/or possibly DMJM/AECOM.) Regardless, whether Bender Rosenthal, Inc. was/is a prime contractor or a subcontractor to a JV or to the Authority, the Matrix Example, page 8 states that a Prime Management Team (PMT) **Prime** or a (PMT) **ROW Sub** cannot have a contract on: **Same Segment ROW**; cannot have a contract on Other Segment ROW; and cannot have a contract on On-Call Right of Way.

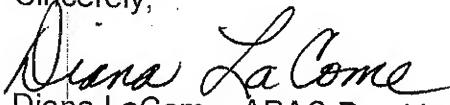
Bender Rosenthal, Inc. is doing business as (dba) Golden State Right of Way Team. Bender Rosenthal Inc. Principal & VP, Bob Morrison, is referred to as the key contact with Golden State Right of Way Team. Bender Rosenthal Inc. and Golden State Right of Way Team are located in the same building at 4400 Auburn Blvd, Sacramento, CA. The two companies are clearly Bender Rosenthal, Inc. How is this not a conflict of Interest? Bender Rosenthal Inc. has unfair advantage since the company has already performed ROW services on 500 parcels. If you check their website, Bender Rosenthal, Inc. has a "Bender Rosenthal California High Speed Train Department." They state (I quote) "JV Partners contracted Bender Rosenthal, Inc. for right of way services including acquiring right of entry permits from property owners along the 197-mile study route from Fresno south to Palmdale" When was this scope of work advertised and awarded to Bender Rosenthal, Inc?

2. Approval of Caltrans Inter-Agency Agreement for the relocation of Highway 99

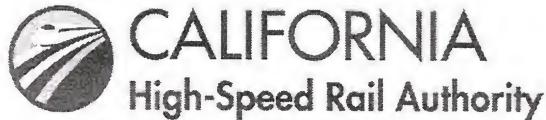
APAC Representatives previously asked the Authority Board if the 30% Small Business Goal with 10% DBE and 3% DVBE Goals would be applied to the Caltrans contract of \$225 Million dollars. We were told that the goals did apply. In reviewing the Agreement recently, we discovered that the 30% Goal is not stated. We are requesting clarification from the Authority Board on the 30% Goal with Caltrans on the Inter-Agency Agreement.

Thank you for not awarding either contract until there is clarification on each.

Sincerely,


Diana LaCome, APAC President

cc: CHSR Authority Board Members
APAC Board of Directors



NOTICE OF PROPOSED AWARDS

RFP HSR11-02
Right of Way Services

Board Members:

Dan Richard
Chairperson
Lynn Schenk
Vice-Chairperson
Thomas Richards
Vice-Chairperson
Jim Hartnett
Michael Rossi
Thomas J. Umberg
Jeff Morales
Chief Executive Officer

Proposed Contractors:

Hamner Jewel Associates
340 James Way, Suite 150
Pismo Beach, CA 93449

Continental Field Services
Corp.
6320 August Dr., Suite 401
Springfield, Fairfax, VA
44551

Universal Field Services, Inc.
1600 Sacramento Inn Way, Suite 216
Sacramento, CA 95815

Golden State Right of Way
Team
4400 Auburn Blvd., Suite 115
Sacramento, CA 95841

Contract Amount: \$8,500,000.00 each (At the discretion of the Authority, individual contract amounts may be reallocated.)

Bidder	Technical Score	Cost Score	Total Score
A to Z Building Inc.	529	204	734
Hamner Jewel Assoc.	614	258	872
Continental Field Services Corp.	618.3	252	870
Universal Field Services, Inc.	608.8	246	855
Golden State Right of Way Team	654.8	258	913
The Bernard Johnson Group	572	213.6	786
Win Win Consulting, Inc.	573.5	228	802

Questions should be directed to: Elizabeth Stone, Contract Specialist
California High-Speed Rail Authority
770 Eighth Street, Suite 800
Sacramento, CA 95814
(916) 431-2929

Dated: December 20, 2012
Expires: December 28, 2012



Sacramento County

Department of Finance,
Fictitious Business Name Statement
770 H Street, First Floor, Room 1710
Sacramento, CA 95814

Fictitious Business Name File Number:	FBNF2012-01157	Expiration Date:	2/7/2017
Filing Date:	2/8/2012	Status:	Filed
Ownership Type: Corporation			

Business Name(s) on this filing	Abandoned Date
GOLDEN STATE RIGHT OF WAY TEAM	

Owner Name(s) on this filing	Withdrawn Date
BENDER ROSENTHAL, INC.	

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Principals


*Bender Rosenthal, Inc.
is certified as a
small business*


*Bender Rosenthal, Inc.
is a woman-owned
business enterprise*


Cydney G. Bender Reents, MAI
President - Principal of Bender Rosenthal, Inc.
[Biography](#)


Stephen A. Rosenthal, MAI
Secretary/Treasurer, Bender Rosenthal, Inc.
[Biography](#)


Robert Morrison, PE, PMP, MBA
Vice President and Principal of Bender Rosenthal, Inc.; ROW Manager and
Project Manager; [Corporate Broker](#)
[Biography](#)


David B. Wraa, MAI
Vice President and Principal of Bender Rosenthal, Inc.
[Biography](#)


Mike Lahodny and Christy Lambdin
Right of Way Project Planner/CalTrans Coordinator and Project coordinator
[Biographies](#)

benderrosenthal.com [4400 Auburn Blvd., Suite 102, Sacramento, CA 95841](http://4400AuburnBlvdSacramentoCA95841) [916-978-4900](tel:9169784900)
[2300 Tulare St., Suite 235, Fresno, CA 93721](http://2300TulareStFresnoCA93721) [559-233-4930](tel:5592334930)

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CA High Speed Train

Continued from the front page

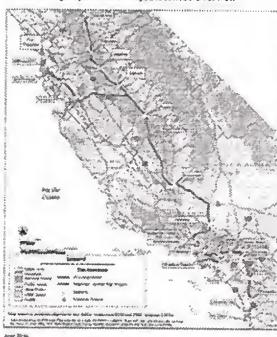
The California High-Speed Rail Authority contracted JV Partners to design and study routes through the southern Central Valley. JV Partners contracted Bender Rosenthal Inc. for right of way services including acquiring right of entry permits from property owners along the 197-mile study route from Fresno south to Palmdale.

Environmental reviews in process

Due to the large scope of the California High-Speed Rail project – the **largest public infrastructure undertaking in the nation** – the environmental review is being conducted in two parts: a statewide program-level report followed by a more specific project-level assessment of each of the nine sections of the system. Each project section is moving through this process at a different pace.

For more information contact:
Bender Rosenthal California High Speed Train Department
Toll Free: 1-877-886-9860
P.O. Box 41281
Sacramento, CA 95841

Contact CA High Speed Train (CAHST)
<http://www.cahighspeedrail.ca.gov/home.aspx>

California High-Speed Train Map, Statewide Overview


benderrosenthal.com 4400 Auburn Blvd., Suite 102, Sacramento, CA 95841 916-978-4900
2300 Tulare St., Suite 235, Fresno, CA 93721 559-233-4930

CALIFORNIA HIGH-SPEED RAIL

AUTHORITY

September 11, 2012

California High-Speed Rail Authority's Organizational
Conflict of Interest Policy



ORGANIZATIONAL CONFLICT OF INTEREST POLICY GOALS

- Integrity, transparency, competitiveness and fairness in contracting
- Prevent unfair competitive advantage
- Provide guidance to enable informed decisions
- Protect validity of Authority Contracts and confidential/sensitive information

DEFINITION OF ORGANIZATIONAL CONFLICT OF INTEREST

- A circumstance arising out of a contractor's existing or past activities, business or financial interests, contractual relationships or organizational structure that results in
 - Impairment or potential impairment of a Consultant's ability to render impartial assistance or advice to the Authority
 - Unfair competitive advantage for any Contractor bidding or proposing on an Authority procurement
 - A perception or appearance of impropriety with respect to any of the Authority's procurements or contracts

ORGANIZATIONAL CONFLICT OF INTEREST DISCLOSURE

- Any Contractor having or potentially having an Organizational Conflict of interest must disclose the matter to the Authority.
- The disclosure must contain the facts and circumstances giving rise to the actual or potential conflict
- The disclosure must contain any efforts the Contractor has taken to mitigate the conflict
- The Authority reviews the matter and informs the Contractor in writing whether it has an Organizational Conflict of Interest
- A Contractor's obligation to disclose in ongoing

FAILURE TO DISCLOSE

- Preclude or disqualify the Contractor from participation in the Authority's procurement
- Require the Contractor to implement mitigating measures
- Cancel or amend the contract under which the Contractor is performing work for the Contractor
- If the Contractor should have been aware of and failed to disclose the conflict prior to the award of the contract, terminate the contract for default.

ORGANIZATIONAL CONFLICT OF INTEREST EXAMPLES

- No team submitting a proposal for an Authority design build contract may include any Consultant that provides or has provided procurement services for that design build contract
- No team submitting a proposal for a Project Section (EIR/EIS sections) design build contract may include any Consultant that provides or has provided professional or consulting services to the same Project Section
- Any Consultant that is responsible for preparing an EIS for a Project Section will be precluded from joining a design build team until after the Record of Decision is issued.

CASE BY CASE FACTORS TO CONSIDER IN GRANTING PERMISSION TO PARTICIPATE OR CONTINUE TO PARTICIPATE IN A PROCUREMENT

- Whether the Contractor has information that will need to be made public or disclosed to other participants in the procurement that may give an unfair advantage to the Contractor
- Whether the relationship involves other branch offices or a parent company and the degree of separation of work teams
- Consideration of the expertise required to undertake the subject work and availability of qualified and skilled Contractors
- Consideration of professional governing body rules like those established by the California Board of Professional Engineers.

CONTRACT COMPATIBILITY MATRIX EXAMPLE

		Can you have a contract here...												Same Segment ROW			Other Segment ROW			On Call ROW			Property Management			Multi-Segment Systems		
		PMT			PMO			HSR - Personal Services			Same Segment ROW			Other Segment ROW			On Call ROW			Property Management			Multi-Segment Systems					
		OK	No	N/A	No	No	No	No	No	No	No	No	No	No	No	No	No	No	No	No	No	No	No	No	No	No		
PMT - Prime		OK	No	N/A	No	No	No	No	No	No	No	No	No	No	No	No	No	No	No	No	No	No	No	No	No			
PMT - ROW Sub		OK	No	N/A	No	No	No	No	No	No	No	No	No	No	No	No	No	No	No	No	No	No	No	No	No			
PMT - 2nd Tier Sub		OK	No	N/A	N/A	?	?	?	?	?	?	?	?	?	?	?	?	?	?	?	?	?	?	?	?			
PMT - SBE Sub		OK	No	N/A	N/A	?	?	?	?	?	?	?	?	?	?	?	?	?	?	?	?	?	?	?	?			
PMT - Personal Services		OK	?	OK	OK	OK	OK	?	?	OK	?	?	?	?	?	?	?	?	?	?	?	?	?	?	?			
If you have a contract here...		OK	Probably no conflict	?	Depends-Check First	N/A	Not Applicable																					

QUESTIONS???

Kern Minority Contractors Association
1330 E. Truxtun Ave
Bakersfield, Ca. 93305
PH # 661-324-7535

Date: January 21, 2013

To: Jeff Morales, Chief Executive Officer

C/o: Tom Fellenz, General Counsel
Robert Padilla, Small Business Advocate
CHSRA Board Members

Re: Request for Proposal for Design – Build Services
RFP # HSR 11-16 Book 2, Part D, Subpart 1
Draft Community Benefits Agreement Addendum 8

Our organization and members support the CHSRA Board decision to approve the CHSRA Community Benefit Agreement at the last Board Meeting.

After reviewing the CHSRA Request for Proposal for Design – Build Services RFP # 11 – 16 Book 2, Part D, Subpart 1: **Draft Community Benefits Agreement (Addendum 8)**

We have some concern and would like to **recommend some changes or add on the agreement** to address the **concern of SB/DBE/DVBE/MB Firms and environmental justice community residents** who would like to be consider for construction work on the high speed rail project.

Overall we are not opposing the draft community benefits agreement only want it to address our concern. I been asking to draft the concern for the following organizations;

1. Kern Minority Contractors Association
2. San Joaquin Valley Black Contractors Association
3. National Black Contractors Association
4. A. Phillip Randolph Community Development Corporation
5. Kern County Construction Booth Camp LLC
6. San Joaquin Valley Construction Academy

My personal background regarding union project agreement

I have been a members IBEW 1245 Union since 1970 my skill trade is journeyman lineman, completed the PG&E power lineman apprenticeship training in 1982, receive my 1st PG&E Sub Station Construction Contracts in 2004, I know first hand the benefit and problem with union project labor agreement am not oppose to union but I believe it should be a choice and firms who don't want to belong to union should be able work as well.

Our recommended change or add on to draft community benefit agreement

1. As apart of agreement their be a **RFP contract for SB/DBE/DVBE/MB Trade Assoication** or Community organization **with track record serving environmental justice community** along the project right away to do the target out reach for the **disadvantaged workers** outline in section 7.6 assist with referred for unions & contractors jobs coordinators.
* **Reason:** The unions & the prime contractors don't have a good record or history recruiting disadvantaged & minority workers for construction job or aprenchship training.
2. As apart of agreement their be a **RFP contract for SB/DBE/DVBE/MB Trade Assoication** or Community organization with track record to provide construction worker **job readiness training for referral** to unions aprenchship training & contractors job coordinators.
* **Reason:** Most of these targeted groups are not Job ready for union aprenchship training or prime contractors either have a good track record with job readiness with the target groups.
3. As apart of agreement their be a **RFP contract for SB/DVBE/DBE/MB Trade Assoication** to **provide pre aprenchship training to target group** members who need assisted to get ready for referral into state aprenchship training program.
* **Reason:** Most of the existing programs don't have a good track record working with these targeted groups.

We ask that some of the money being propose for the work center \$2,000 per month in section 7.8.3 be use for Trade Assoication assisting with the above mention items.

We believe SB/DBE/DVBE/MB Contractor Trade Assoication location in the project area can do a better job with out reach, recruitment, referral, jobs coordinator assisting disadvantaged workers to be included in the San Joaquin Valley High Speed Rail project by working in partnership with the unions, prime contractors California High Speed Rail Authority.

We know the problem first hand and committen to diversity in the construction of the high speed rail project.

We are also in support of the additional recommendation to agreement outline in Mr. Eddie Dillard letter submit by; **Oakland Black Board of Trade and Commerce.**

I will be attending the next CHSRA Board meeting to provide additional remark.

Sincerely,

Marvin Dean, President
Kern Minority Contractors Assoication



Oakland Black Board of Trade and Commerce

January 21, 2013

Mr. Robert Padilla
Small Business Advocate
California High Speed Rail Authority
770 L Street Suite 800
Sacramento, CA 95814

Re: CHSR Community Benefit Agreement

Dear Robert;

Per our conversation, listed below are the recommended changes for the California High Speed Rail Authority. Please review and consider adding them to the final agreement. If you need the specific language to implement any of these suggestions, just let me know.

- (1) The California High Speed Rail Authority Community Benefit Agreement should include a carve out for small and minority business. Over 80 percent of small and minority owned businesses are not members of unions. They should not be locked out of opportunities to participate in this major Federal, State and local funded project. I recommend a carve out that says that if you are a subcontractor on the project and your contract is 5 million or less you do not have to be signatory to any union, but if your contract exceeds 5 million, you must be signatory to the union that represents your trade. This was done on the Bart Airport Connector project and it has worked very well both for the Prime Contractor, the Sponsoring agency and the subcontractor.
- (2) California High Speed Rail Authority Community Benefit Agreement should include a local pre-apprentice funding source to help local organizations provide employment training for community individuals. This could be achieved by assessing a 25 cents per hour per craft on all workers and these funds would be targeted to community based organizations to help recruit, train and place workers with construction contractors on the job. This function should not be under the direction of the Agency, nor the Prime contractor, nor the union. It should be done by local community based organizations who know the landscape and who can do the necessary outreach to attract the potential workers.
- (3) To increase the possibility of implementing a successful local construction pre-apprentice program the California High Speed Rail Authority should issue a RFP for current DOT approved employment training operators to joint venture with local community based organizations that provide employment training in the Kern/Bakersfield area. This program could be funded using Federal (FHWA/FTA/RTA/DOL) or State (Caltrans/CTA/) funding sources. Only service



Oakland Black Board of Trade and Commerce

providers who have a substantial track record and a proven method of job placement would be eligible to apply for providing this service.

(4) California High Speed Rail Authority Community Benefit Agreement should be administrated by an independent person. It should not be administered by the California High Speed Rail Authority so there will be no conflict of interest. This person would report to the Joint Powers Authority, which should be made up of representatives from the California High Speed Rail Authority, the Prime Contractor, the Unions and a Community representative. This is a critical element of the highest degree to ensure the integrity of the project.

(4) The California High Speed Rail Authority should issue a RFP for a firm that has administered PLA's on major construction projects and has comprehensive experience working with labor unions, prime contractors as well as subcontractors and project sponsors. The RFP should have a 30 percent DBE/SBE participation goal. It is very important that this document is done right and has the highest degree of transparency.

The issues addressed above has the blessings and support of the organizations listed below, please forward this document to the CEO, Legal Staff and the Board of Directors.

If you have any questions you can reach me at (510) 706-9005. Thanks for your timely consideration.

Eddie Dillard
President & CEO
Oakland Black Board of Trade and Commerce

Marvin Dean, Kern County Minority Contractors Association
Fred Jordan, President San Francisco Black Chamber
Arby Stone, California Black Chamber
Diana LaCome, Associated Professionals and Contractors
Northern California Minority Contractors Association

Revised Sept. 6, 2012. Over 90 seconds. Hope you'll let me present it in full in the meeting.

CA HSRA Directors:

Your blended rail plan is **dangerous**.

- It locks in 43 grade crossings for pedestrians, cars, and trucks – an invitation to accidents and to the demented, and consequent delays.
- As trains whiz by, Caltrain passengers stand unprotected on station platforms inches away.

It's far too hazardous for trains at high speeds.

The plan is **costly**.

- Caltrain modifications.
- Subway tunneling in San Francisco.
- Terminal facilities (station, yard, shop, etc.) in a high rent district.
- Future trans-Bay train tube for extension to Sacramento???

Safer, and much less costly: Amtrak route (UP L/D Lines) north from Santa Clara (via Mulford) to a new West Oakland intermodal station where BART crosses over the UP/Amtrak line:

- None of the above high cost items;
- Simple Caltrain conversion to BART;
- A shorter, straighter, and safer route for Capitol Corridor;
- Enhanced SF/Peninsula rail access to Sacramento;
- BART every few minutes to 4 downtown SF stations and the West Bay;
- Frequent BART to many East Bay stations.

Upgrade (i.e., grade separate, multi-track, securely fence) the Mulford and East Bay rail lines for HSR as part of a 5-County BART plan.

What about Caltrain?

The comprehensive 1957 SFBARTC "Report to the Legislature" called for unified regional rapid transit under one management (including to San Jose and around the Bay). Five years later, a super-majority of voters in three counties bonded themselves in 1962 for \$792 million to build a then-unproven BART system. (The bonds were paid off by 1999.)

As requested by San Mateo and Santa Clara Counties, BART has extended to Millbrae, is under construction to Berryessa, and is ill-planned to downtown San Jose and the Santa Clara Caltrain station (by San Jose's Mineta International Airport).

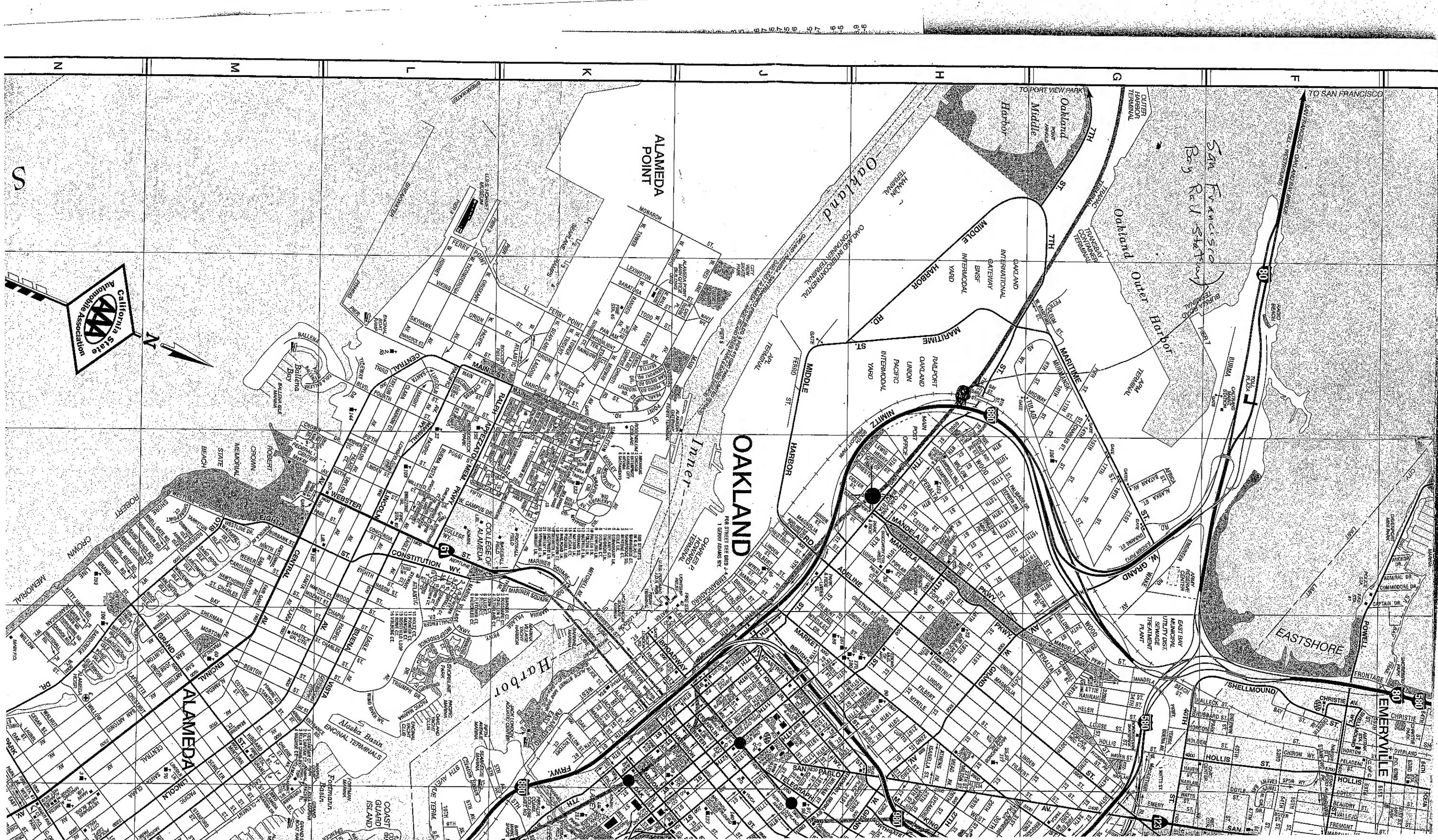
It's time to update the 1957 Report: convert Caltrain (Millbrae to Santa Clara) to BART and abandon the rest. About 25 miles would be at grade beside the UP freight main with about 10 new overpasses, but about 5 miles (in Burlingame-San Mateo, Redwood City, and Atherton-Menlo Park) would likely be in a depressed cut bridged by city streets.

5-County BART

Let's develop a balanced 5-County plan to fund these Caltrain changes; the Mulford line upgrade; a new West Oakland BART-HSR intermodal station; and BART extensions: to the Golden Gate and Carquinez bridges, to Brentwood, and over the Altamont generally along the former SP rail line.

Let the voters decide on the plan and funding, as they did for the original BART fifty years ago. (Adjusted for inflation and the 5-County population, a bond issue equivalent to BART's in 1962 should yield about \$16 billion.) 5-County BART appears financially feasible. Linked to High Speed Rail, it would eliminate many of the congestion and environmental concerns we face today.

Robert S. Allen
BART Director, District 5, 1974-1988
Retired, SP (now UP RR) Western Division, Engineering/Operations
Life Member, American Railway Engineering and Maintenance of Way Association (AREMA)



HIGH SPEED RAIL SUMMIT

Politics • Investment • Appropriations



Joe Boardman
Amtrak



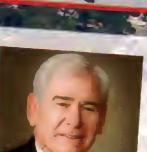
Democratic Leader
Nancy Pelosi



Congressman
Bill Shuster
(Invited)



Congressman
John Mica
(Invited)



Rod Diridon
Mineta Transportation
Institute



Joan McDonald
New York DOT



Douglas Firstenberg
Stonebridge Associates



Dr. Richard Geddes
Cornell University



Kevin Brubaker
Environmental Law
& Policy Center



Armin Kick
Siemens



David Carol
Parsons Brinckerhoff



Vinay Mudholkar
Louis Berger Group

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- Amtrak's NEC Capital Improvement Programs
- Hurricane Sandy Rail Projects & Funding
- Ramping up Federal Funding
- Politics and High Speed Rail
- Procurement Opportunities
- Public Private Partnerships
- Infrastructure Banks & HSR Funding
- HSR Around America Update
- Transit Oriented Development
- HSR Around the World
- Special Networking Events



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FREEPORT-MCMORAN
COPPER & GOLD



GOVERNING



USHSR 10 G St, NE, Ste 710, Washington, DC 20002

Caltrans Records Reveal Concerns About Bay Bridge Concrete

May 29, 2012, 10:25 am • Posted by [KQED News Staff](#)

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- Source: [SACBEE](#)



A builder of the new San Francisco-Oakland Bay Bridge failed to disclose that a 19-foot section of concrete in the foundation of the span's signature tower had not hardened before it was tested. By keeping quiet about the problem, the builder prevented further examination or repair...Beyond the large area of suspicious concrete in one of the reinforced underground foundation piles, a Bee examination of Caltrans records found numerous other problems with the piles, and gaps in essential data. Experts who reviewed concrete and engineering records for The Bee questioned the ability of the main tower foundation to resist an extreme earthquake – the reason for building the new bridge.

Read more at: www.sacbee.com

California engineers question high-speed rail oversight

By JULIET WILLIAMS, Associated Press

Posted: 01/21/2013 10:46:10 AM PST

Updated: 01/21/2013 10:46:55 AM PST

SACRAMENTO -- As California prepares to embark on its largest public works project in decades, a union that represents state engineers is questioning whether all the construction work will be thoroughly scrutinized.

Contractors submitted bids this week to design and build the first 30-mile stretch of track for the \$68 billion high-speed rail system, which eventually is designed to link Northern and Southern California by trains traveling up to 220 mph. The contract they sign is expected to be for up to \$1.8 billion to build the initial segment in the Central Valley.

The documents outlining the requirements for the bids say the independent contractor that would design and build the first phase of the project would hire the inspectors charged with testing the work on that segment, running from Madera to Fresno. The inspections would then be submitted to the California High-Speed Rail Authority.

Critics, including lawmakers and a state engineers union, say the arrangement could present a conflict of interest and that independent inspectors who are not aligned with the construction company are needed.

The inspection process outlined so far is not equivalent to having a state-employed engineer or an independently hired contractor on the ground looking at the work as it happens, said Bruce Blanning, executive director of Professional Engineers in California Government, the union that represents 13,000 state engineers.

"We believe

Advertisement

that when you have a major public infrastructure project of that nature, that you should have somebody looking out for the public to ensure it is being

built safely," he said.

Officials with the California High-Speed Rail Authority say the inspection system will be rigorous and that the agency will have the authority to add more inspections at any time -- by independent operators or CalTrans staffers.

"The suggestion that we would in any way, shape or form compromise safety is both insulting and flat-out wrong," said the authority's chief executive, Jeff Morales.

He rejected the union's characterization of the inspection process, saying scrutiny of the high-speed rail project will be robust. He called the construction plan "standard operating practice around the country and the world" and said using contractors allows the rail authority to tap highly qualified international experts and is also the most efficient.

Morales said the first level of review involves inspectors who work for the contractor.

"The second layer is there is a whole separate inspector who is retained by the contractor but reporting to us, who then has a separate plan for going out and checking and inspecting on the ground what's being done," Morales said. "The third level is then that we, as the authority, will go out and do checks ... to ensure that in fact, everything is what it's supposed to be."

Morales said state law also allows the rail authority to contract with CalTrans, if it desires, to inspect the work on what will be one of the nation's largest public works projects when it gets under way.

He said the engineers union opposes the design-build contract, an increasingly common form of bidding in which state and local agencies contract with private companies to do the design and the construction, because it requires fewer government workers. Morales said similar inspection processes are common on other design-build projects in California.

Yet the unprecedented size and complexity of the plan to build America's first high-speed rail line makes it difficult to compare the proposal to other major infrastructure projects in California and around the country. The request-for-proposal sent to potential contractors is thousands of pages

and has hundreds of additional pages of addendums.

The inspections to be done include verifying things such as whether the holes for pilings have been dug deep and wide enough, whether the steel used is in the proper location and is sufficiently strong, and whether the mix of cement and concrete is right and has the right consistency.

"The way the RFP is being set up, the construction contractor inspects and verifies his own work. The fact that another person looks over some documents doesn't change that," Blanning said. "The question is who actually inspects the work when the concrete's being poured?"

The rail authority has been criticized in the past for its lack of oversight and ceding too much authority to contractors.

State Auditor Elaine Howle wrote in January 2012 that the authority's processes for monitoring the performance and accountability of its contractors were "inadequate," that they lacked oversight and that its contractors and subcontractors "outnumber its employees by about 25 to one."

She said in a report that the authority "has delegated significant control to its contractors and may not have the information necessary to make critical decisions about the program's future."

Assemblywoman Diane Harkey, a critic of high-speed rail, said she is concerned about a lack of oversight at all levels of the project, including that the authority is not responsible to anyone other than the governor.

"The contractors are reporting to the contractors reporting to the contractors," said Harkey, R-Dana Point.

She said some agency other than the authority should be reviewing all its contracts in detail. Harkey's request for Howle to perform another audit of the project was rejected in a legislative committee last year, but she said she will re-submit it this year.

"It's state debt and public funds, and we really need some oversight," she said.

The bid requirements from the high-speed rail authority go into significant detail about the required skills of any inspectors who are hired, saying they must have at least 10 years of experience in their field of expertise "with a

proven track record as supported by their resumes," including work on projects with federal oversight.

The proposal says the contractor will self-verify and validate "that the particular requirements for a specific intended use have been fulfilled" and comply with a self-written plan to provide those verifications.

The contractor also will have to hire an independent engineering consulting firm that is "not associated in any way" with the firm working on the design or construction. That firm will submit its reports directly to the high-speed rail authority, but the engineers union notes that the contract requirements also say that no one will be allowed to duplicate those engineers' work.

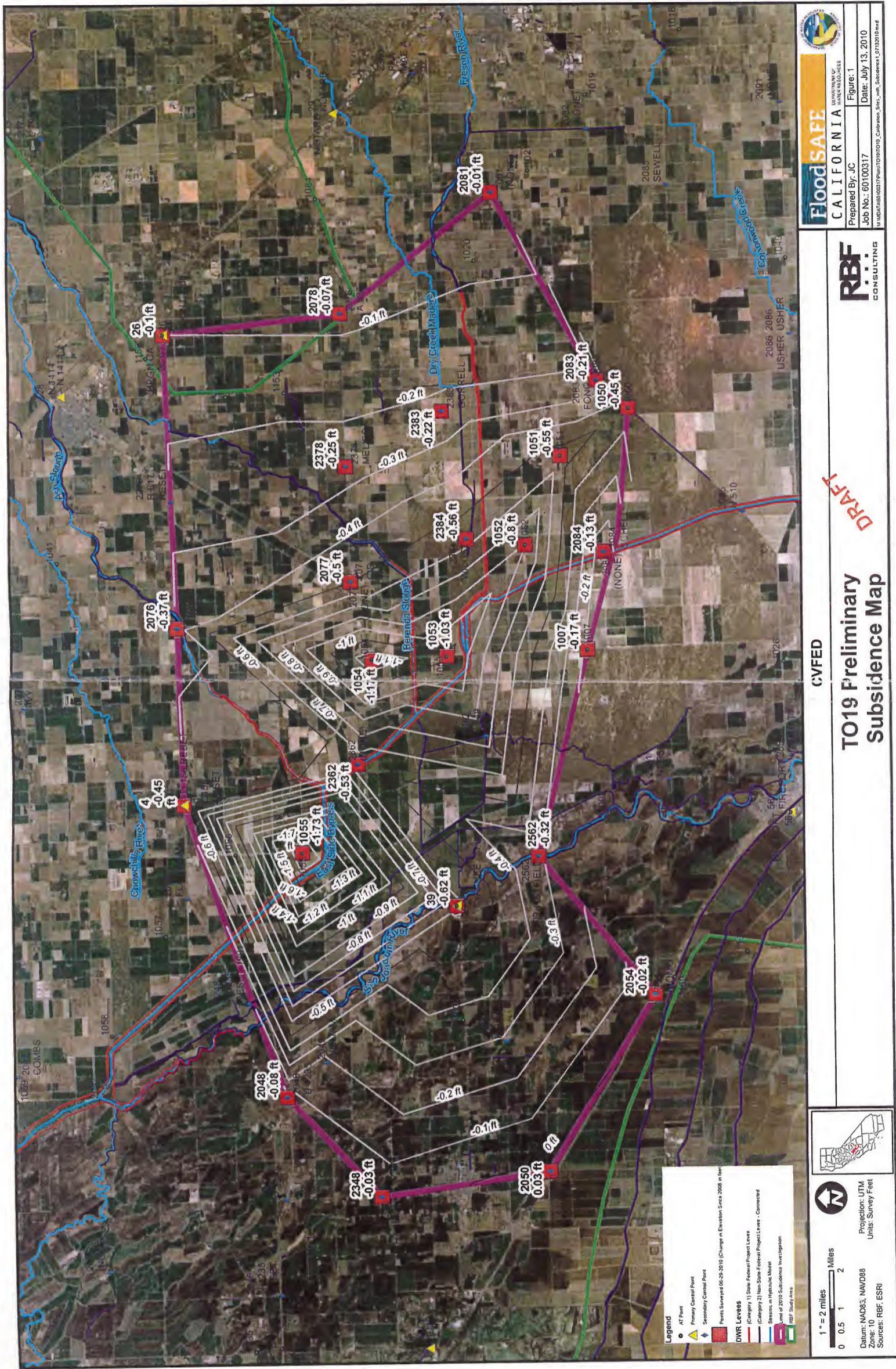
Sen. Mark DeSaulnier, D-Concord, chairman of the Senate Transportation Committee, said he intends to thoroughly vet whatever deal the authority signs with one of five consortiums that are bidding for construction of the first segment.

"We're going to be watching and engaging with them to ensure there is proper oversight," he said, adding that he plans to meet with the engineers union about its concerns.

"We've got to make sure it's done right," DeSaulnier said.

While lawmakers approved the first phase of the project, it's unclear what ability the Legislature has to make changes. The rail authority was established as an independent body and its senior staff members are appointed by the governor.

The engineers union said it is not opposed to all design-build projects, including those that rely on private contractors doing inspections, but believes the high-speed rail project goes beyond the process approved by the Legislature.





January 23, 2013

Chairman Dan Richard
California High Speed Rail Authority
Board of Directors and Executive Staff
770 L Street, Suite 800
Sacramento, CA 95814

Dear Chairman Richard:

I am writing to share with you the concerns of Associated Builders and Contractors of California members related to the Community Benefits Agreement (CBA) found in the California High Speed Rail Authority Addendum 8 of the Request for Proposal (RFP).

Associated Builders and Contractors (ABC) is a "Merit Shop" construction trade association comprised of five chapters representing of 1230 member companies throughout California. Merit Shop is a way of doing business in which companies reward employees based on performance and encourage them to reach their highest level of achievement and where contracts are awarded based on safety, quality, and value, regardless of labor affiliation. Our craft and apprentice training programs are recognized by the California Department of Industrial Relations and cover a wide variety of skilled trades including: electrical, plumbing, sheet metal, HVAC, painters, laborers, carpenters, heavy equipment operators, mobile crane and welding.

In the construction industry, Addendum 8 is more commonly called a Project Labor Agreement (PLA). Many of the items in this document are discriminatory to the 83% of California workers that are nonunion. It is important to note that the proposed PLA requirement will also prevent the Authority from meeting its 30% small business goal and the ability to employ National Disadvantaged Workers.

Additionally, PLA's can add up to 18% onto project construction costs. This means on a \$68 Billion Dollar project like High Speed Rail, costs could be increased by \$12.24 Billion. With this in mind, we encourage the Authority to modify the CBA/PLA and recirculate the RFP with the addition of a new Fair and Open Competition Policy that will increase opportunities for craft workers regardless of labor affiliation.

The language in the CBA/PLA not only shuts out Merit Shop Contractors but seriously limits California workers, like the nearly 1,800 students that are currently enrolled in ABC's craft and apprenticeship programs, from working on this project. Here are some examples:

1. Article 7.1 highlights that this document was created to benefit only the construction unions and not the 83% of California workers who choose not to be in a union. This section puts the unions in control of all craft labor for the project despite the fact that they represent only 17% of California's construction workforce.

2. Article 7.1.2 mandates that a Contractor's core workforce is severely limited from working on the project. First, only a maximum of five employees of a contractors core workforce are allowed to work on the project. These core employees are skilled and are familiar with working under the company's policies and procedures. Their competency, safety and work ethic are known to the contractor. However, with a PLA, many of the firm's available pool of workers will be kept off the job. Secondly, the ratio of hiring is mandated to be done in the following order: one core employee, then one union worker dispatched through the hall. This further complicates the ability of putting skilled workers on the job that are familiar with the contractor they will be working. This leads to uncertainty and delays when delivering a quality project on time and at the best price for the taxpayers.
3. The provisions referenced above shut out 83% of California Construction Workers who do not belong to a union. With a goal to hire disadvantaged residents, why would the authority want to limit the pool of eligible folks by implementing these provisions?

The CBA/PLA also stifles competition and will make it harder for the Authority to meet its 30% small business goal. Many qualified contractors that meet the guidelines of a small business as defined in the Authority's goals may not even bid on this project as a result of the discriminatory language requiring employers to hire workers through the union hall. Simply put, when fewer contractors bid on a project you have less competition. When there is less competition the taxpayers cannot be ensured they are getting the lowest possible price.

Article 13.4 clearly illustrates this point. While all management and discretion is given to contractors to manage the project and the workers that have been dispatched from the hall it also requires that every contractor execute and comply with the CBA/PLA should such contractor be awarded work covered by this agreement. As previously stated, many contractors choose to not even bid projects with language that favors the hiring of union workers. For the very reason that PLA's add up to 18% in increased costs to projects, and with the potential for savings of over \$12 Billion with Fair and Open Competition the High Speed Rail Authority should make every effort to increase competition on this project, not strangle it with the CBA/PLA.

One immediate change that needs to be made is the waste of taxpayer dollars as required by section 7.8.1-7.8.5. The CBA/PLA mandates that the High Speed Rail Authority is required to pay \$2,000 a month into a scheme called "Helmets to Hardhats", a program designed to hire veterans and introduce them to careers in construction. This program was recently called to task by Public CEO.com for failing to hire a single veteran. The October 25, 2012 article examined the Lodi Energy Center and discovered that while the "Helmets to Hardhats" center was involved, not one record could be produced showing that a veteran was hired. Local Government programs like Work Force Investment Boards and the local Veteran's Affairs offices would be better suited to perform this task and would likely do so at no additional cost to the Authority and the taxpayers.

In addition, it is important to point out that the CBA/PLA is designed to not benefit all workers but benefit the Unions and their Trust Funds.

1. Article 3.3, 8.1 and 8.2 contain provisions which should be offensive to many of the future workers of this project. These two sections require all employees covered by the agreement, including a contractor's core employees, to pay into all Union Trust accounts. This includes accounts that are set up for health and welfare, vacations and retirement pensions. Many workers that are employed by "Merit Shop" firms receive health benefits through their employer's multi-employer pension plan, third-party administered pension plan, or a bundled pension plan. By forcing these employers to pay into the union trust agreements, workers will never be able to utilize these benefits. For example, the Union Trust Fund will not allow a Core

employee to transfer the dollars contributed in his name to a personal retirement account even though the core employee may have a retirement account with their current employer. This effectively enriches the Union Trust account at the expense of the worker.

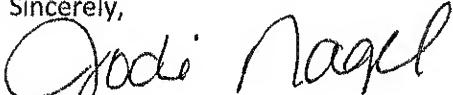
2. Section 6.2 requires the few "Merit Shop" employees allowed on the project to pay nonrefundable union dues and/or fees to the union as a condition of working under the CBA/PLA, even though they work for a nonunion employer. Section 6.1 requires unions to be the exclusive bargaining representative for workers during the life of the project. When agreeing to participate in a PLA project, the decision to agree to union representation is made by the employer (through the act of agreeing to the PLA by signing a letter of assent) rather than the employees. Construction employees often argue that forced union representation—even for one project—is an infringement of their workplace rights and runs contrary to their intentional decision not to join a union.
3. For the many workers that choose not to work under union restrictions, provisions in articles 7.1.2, 7.3, and 7.3.2 are an invasion of their privacy. By mandating that sensitive information, like a workers social security number, be provided to the Union hiring hall could lead to greater incidents of identity theft. Furthermore, provisions like this provide sensitive information even though certified payroll reports are collected and already provide pertinent information through prevailing wage laws. With the rise of identity theft protecting workers personal information should be of the utmost concern to the Authority. For years, provisions like this have been designed to provide unions with the opportunity to dispatch "salts" with conflicts of interest to nonunion companies.

ABC has been calling on the High Speed Rail Authority numerous times asking for a Fair and Open Competition policy that will guarantee the following:

The California High Speed Rail Authority shall not, in any contract for the construction or maintenance of High Speed Rail Construction, require that a contractor, subcontractor, material supplier, or carrier engaged in the construction or maintenance of the project, execute or otherwise become party to any project labor agreement, collective bargaining agreement, community benefit agreement, pre-hire agreement, or other agreement with employees, their representatives, or any labor organization as a condition of bidding, negotiating, being awarded, or performing work,

With California's unemployment rate at 9.8% if the Authority is serious about meeting their small business goals, delivering the best product at the most competitive price for the taxpayers and employing disadvantaged workers from the California workforce, then the RFP needs to be recirculated once a Fair and Open Competition Policy has been adopted by this board. Without these critical changes, the discriminatory language will remain and will prevent qualified California workers from competing for work on the High Speed Rail Project.

Sincerely,


Jodi Nagel

